



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Hi-Shear Technology Corp.

File: B-250814.2

Date: May 17, 1995

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David M. Hill, Esq., Department of the Air Force, for the agency.
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DIGEST

1. Protest objecting to relaxation of qualification standards for awardee will be sustained only where it can be demonstrated that the relaxed standards will not meet the agency's needs or that the protester was prejudiced by the change in standard.
2. Protest alleging that contracting officer relied on incorrect information regarding Blue Ribbon Contractor's performance on ongoing contract in determining not to make award to it is denied where record shows that contracting officer did not rely on allegedly incorrect information to Blue Ribbon Contractor's detriment.

DECISION

Hi-Shear Technology Corp. protests the Department of the Air Force's award of a contract for recovery sequencers to Quantic Industries under request for proposals (RFP) No. F41608-94-R-10018. The protester contends that the Air Force relaxed the qualification test requirements for Quantic, which allowed Quantic to offer a product built to less exacting standards than the one offered by Hi-Shear. The protester also argues that the contracting officer relied on incorrect information concerning its past performance in evaluating its proposal for award under the Blue Ribbon Contractor Program.

We deny the protest.

The RFP, which was issued on June 9, 1994, contemplated the award of a 3-year indefinite quantity requirements contract for five configurations of recovery sequencers.¹ Competition under the RFP was restricted to qualified manufacturers, five of whom were identified in the solicitation. Since two of the five qualified manufacturers (Hi-Shear and Quantic) were small businesses, the acquisition was set aside for small business competition.

The solicitation advised offerors that award would be made in accordance with the AFMC Blue Ribbon Contractor Program. See AFMC Federal Acquisition Regulation Supplement, Part 5315.605-90. This program, which applies to spare parts acquisitions, recognizes that responsible contractors have varying degrees of quality and delivery performance, and permits the contracting officer to consider, in addition to price, an offeror's past quality and delivery performance and overall cost to the government in making an award decision. Factors to be considered in determining whether award to other than the low-priced offeror is warranted include: price; price-related factors including required delivery schedule; complexity of items; criticality of items; size of order (quantity, dollar value, contractor's plant capacity); need for first article; absolute dollar difference; new contractor's past quality and delivery performance; and overall cost to the government.

Both Hi-Shear and Quantic submitted offers by the July 15 closing date. Quantic's total evaluated price of \$5,301,939.01 was significantly lower than Hi-Shear's price of \$6,620,403.00. The contracting officer determined that both offerors could be expected to furnish conforming items in accordance with the required delivery schedule and that the difference in the level of performance that could be anticipated from Hi-Shear, which was a Blue Ribbon Contractor, and Quantic, which was not, was insufficient to justify the payment of a price 19.92-percent higher; she therefore selected Quantic for award. On September 19, the agency awarded the contract to Quantic.

Hi-Shear protested to our Office on October 7, contending that Quantic's proposed prices were below cost and represented an effort to buy in. Hi-Shear also argued that Quantic should be required to furnish 25 first articles (five of each configuration) for testing since it had been qualified on the basis of a single unit of only one

¹A recovery sequencer is a device that provides electrical impulses at a timed rate to the different components of ACES II ejection seats during an unplanned departure. There are five different configurations of the sequencers, which are used in differing types of aircraft.

configuration. In response to an agency request for summary dismissal of these grounds of protest, in which the contracting officer noted that Quantic's Bill of Material for each sequencer was approximately \$500 less than Hi-Shear's estimate, Hi-Shear added a supplemental ground of protest: i.e., that the unit that Quantic had qualified did not contain specified sole-source parts. Hi-Shear also raised the argument that the qualification of Quantic on the basis of a single unit of only one of the five configurations was improper since the sequencing requirements for the five configurations were not identical.

The agency responded to these arguments in its report, arguing that a below-cost bid is not illegal, see Crestmont Cleaning Serv. & Supply Co., Inc. et al., B-254486 et al., Dec. 22, 1993, 93-2 CPD ¶ 336, and that, in any event, Quantic had submitted evidence establishing that its prices were not below cost. In response to the protester's assertion that Quantic's qualification unit did not contain the parts specified in the source control drawings, the agency noted that Hi-Shear had offered no evidence to substantiate its position. In addition, the Air Force furnished as part of its report copies of the quotations that Quantic had received from the sources designated in the source control drawings. The agency also argued that the qualification of Quantic on the basis of a single unit was proper since the governing Douglas Aircraft specification required testing of only one unit and since qualification of the different configurations had always been by similarity to the one tested.

In commenting on the agency report, the protester did not attempt to rebut the agency position on any of these matters, and we therefore view them as abandoned. Arjay Elecs. Corp., B-243080, July 1, 1991, 91-2 CPD ¶ 3. The protester did raise additional grounds of protest, however, which we address below.

First, Hi-Shear argued that the Air Force improperly relaxed the qualification test requirements for Quantic, which allowed Quantic to offer more cheaply constructed items. Specifically, Hi-Shear alleged that the Air Force had allowed Quantic to perform a required temperature-altitude test in two separate phases, rather than simultaneously, as required by the governing specification.² According to the protester, testing of the sequencers under simultaneously applied conditions of low pressure and high temperature is a substantially more severe test than separate testing of low

²The Air Force concedes that the governing Douglas Aircraft specification, A114520, calls for simultaneous performance of the temperature and altitude tests.

pressure and high temperature since elevated temperatures tend to weaken the bonds of the materials used to seal various parts of the sequencer, especially capacitors, and also tend to increase the internal pressures of any gases encapsulated within the parts, while the lower ambient pressures further increase the pressures of those internal gases relative to external ambient pressures. As a result, the protester contends, the effects of elevated temperatures and lower ambient pressures are synergistic and more likely to result in deleterious effects such as leakage of gases or fluids from sealed enclosures or rupture of pressurized containers than would be the case if temperature-altitude tests were conducted separately.

We will sustain a protest objecting to a relaxation of qualification standards only where it can be demonstrated that the relaxed standards will not meet the agency's needs, Automated Power Sys., Inc., B-251019, Mar. 2, 1993, 93-1 CPD ¶ 193, or that the protester was prejudiced by the change in standard. Goodyear Tire & Rubber Co., 72 Comp. Gen. 28 (1992), 92-2 CPD ¶ 315, aff'd, Varec N.V.--Recon., B-247363.7, Mar. 23, 1993, 93-1 CPD ¶ 259. Here, neither has been demonstrated. The agency explains--and the protester does not dispute--that testing for low pressure and high temperature at the same time is not required to meet its minimum needs since the two conditions will not occur simultaneously. (According to the Air Force, low pressure environments, which exist at high altitudes, are normally associated with below ambient temperature environments.)³

Further, with regard to the issue of prejudice, although the protester alleges that Quantic was able to offer an inferior product at a reduced price as a result of the relaxation of the testing standard, it has offered no evidence to substantiate its claim. The record in fact suggests that the primary reason that Quantic was able to offer a price lower than Hi-Shear's was that in determining its price, Hi-Shear substantially overestimated the amount that it would pay for batteries, which are a major component of the sequencers and for which there is only one approved supplier, Eagle Pitcher. In this regard, the agency notes that in a teleconference with Hi-Shear, the protester estimated that it would have to pay \$400 more per sequencer for batteries than it had on its previous buy, which would bring the price of batteries for each sequencer to

³The protester did not allege that testing for low pressure and low temperatures separately would be less rigorous than testing for them simultaneously; thus, it apparently concedes that performing these tests separately is equivalent to performing them simultaneously.

approximately \$1,200. This was apparently an overestimation on the part of Hi-Shear, which subsequently represented to our Office, in an attachment to its November 8 letter, that its price per sequencer for batteries was \$808, an amount quite close to the amount that Eagle Pitcher quoted to Quantic.

In commenting on the agency report, which included a copy of the contracting officer's determination to award to other than a Blue Ribbon Contractor, the protester also alleged that in deciding not to award to it, the contracting officer had relied upon incorrect information regarding its performance under an ongoing contract for sequencer refurbishment, and, in addition, had incorrectly concluded that Quantic's lot samples were unlikely to fail. Specifically, the protester points to the following findings of the contracting officer:

"a. REQUIRED DELIVERY SCHEDULE: Both contractors quoted delivery as required in the solicitation. The delivery schedule is realistic and both companies are equipped to meet the [g]overnment's demands. Although a review of Quantic's performance during the past indicates that they have a 60 [percent] delinquency rate, it is based on only 5 contracts. Even though Hi-Shear is Blue Ribbon, they have not been performing the repair of these same sequencers on contract F41608-93-D-1049 on schedule. It is important and necessary to receive the items as per the contract, but it is determined that both companies could comply with the delivery schedule equally.


"b. CRITICALITY AND COMPLEXITY: The Sequencer is a Critical and Complex item. Although both contractor's have been qualified by the government to manufacture the sequencers, lot samples are required by both contractors. Based on the extensive prequalification requirements, problems in lot sample failures are not anticipated by either contractor."

The protester contends that its performance is not behind schedule (since the schedule has been modified to extend the delivery date), and that, in any event, any delays in delivery are not its fault, but are instead attributable to government-directed changes in the contract; it therefore asserts that the contracting officer unfairly "downgraded" it during her evaluation based on this incorrect information. Hi-Shear further argues that the contracting officer's conclusion that Quantic's lot samples are unlikely

to fail was unreasonable since Quantic did not perform simultaneous temperature-altitude testing during qualification testing.

We agree with the agency that, regardless of whether or not the contracting officer correctly viewed Hi-Shear as responsible for delays in delivery under contract F41608-93-D-1049, there is no evidence that she "downgraded" Hi-Shear in her Blue Ribbon Award determination based on her view of its performance under that contract. Although the contracting officer did note that the protester had not been performing the refurbishment contract on schedule, she did not rely on this as a basis for finding that Hi-Shear could not be expected to perform the subject contract on schedule; she concluded that it could comply with the delivery schedule. Further, to the extent that the protester is really arguing that it should have been rated higher than Quantic with regard to delivery schedule, we fail to see how the contracting officer could have given it a more favorable rating than "can comply." With regard to the protester's second argument, since Hi-Shear has not demonstrated that the Air Force unreasonably concluded that its minimum needs could be met through separate (rather than simultaneous) temperature-altitude testing, we see no basis for questioning the reasonableness of the contracting officer's conclusion that based on the extensive prequalification requirements, the contracting officer did not anticipate lot sample failures by either contractor.

The protest is denied.


(or) Robert P. Murphy
General Counsel